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JAN 26 2006

In re Application of  
BURFEIND et al.  
Application No. 10/004,623  
Filed: December 3, 2001  
Attorney Reference No. 14305.6USC1

DECISION ON PETITION

This is a decision on the petition filed December 22, 2003 and resubmitted January 31, 2005, requesting a decision on the petition to withdraw the holding of abandonment.

The petition to withdraw the holding of abandonment is **DENIED**.

A final Office action was mailed on March 24, 2003, setting a three-month period of response. The Notice of Abandonment was mailed October 1, 2003.

Petitioner states that the final Office action was mailed to the old correspondence address and not to the new correspondence address of record. Petitioner further states that he did not intend to abandon the application or fail to respond the final Office action. The petition is accompanied by declarations of Nicholas P. Johns, Richard J. Gregson and Jodi Gandel-Klien, along with a copy of the docket record where the final Office action would have been entered and docketed.

A review of the written record indicates that the final Office action was received by petitioner, albeit, from the previous attorney of record, Schwegman. The final Office action was mailed to Schwegman and Schwegman transferred the final Office action to petitioner.

The record also indicates that a Revocation of Powers of Attorney, a Power of Attorney and a change of address was received on March 17, 2003, but not entered into the file until April 8, 2003. A supplemental Information Disclosure Statement was filed on May 6, 2003.

Pursuant to M.P.E.P. §710.06, the Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the

correspondence address;

(B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

Petitioner failed to take the necessary steps to restart the shortened statutory period for reply. When the final Office action was received from Schwegman, petitioner should have informed the USPTO that the final Office action was not mailed to the correct correspondence address and asked that the shortened statutory period for reply be restarted.

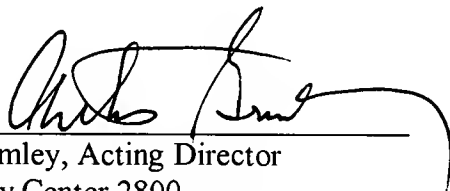
While it is regrettable that the final Office action was not mailed to the correct correspondence address, petitioner's failure to take action is no reason to withdraw the holding of abandonment.

As for petitioner's intention not to abandoned this application, this petition will not address the issue.

For the above reasons, the petition to withdraw the holding of abandonment is denied.

Petitioner may wish to consider filing a petition under 37 CFR § 1.137(a) or (b) requesting that the application be revived. A petition under 37 CFR § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action; (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR § 1.137(c); and (4) the petition fee as set forth in 37 CFR § 1.17(m). No consideration to the substance of a petition will be given until this fee is received.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.



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